INTERIOR BOARD OF INDIAN APPEALS

Theodore B. White v. Acting Deputy Assistant Secretary -
Indian Affairs (Operations)

15 IBIA 142 (03/27/1987)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

THEODORE B. WHITE
v.
ACTING DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 86-19-A Decided March 27, 1987

Appeal from a decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) concerning ownership of a tract of land formerly held in Indian trust status.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Lands: Allotments: Alienation

   Approval of conveyances of Indian trust or restricted land is committed to the discretion of the Bureau of Indian Affairs. In reviewing such approvals, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration has been given to all legal prerequisites to the exercise of discretion.

APPEARANCES: Martin J. Jordan, Esq., Chicago, Illinois, for appellant; Michael D. Cox, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee.

OPINION BY ADMINISTRATIVE JUDGE LYNN

On December 20, 1985, the Board of Indian Appeals (Board) received a notice of appeal from Theodore B. White (appellant). Appellant sought review of an October 17, 1985 decision issued by the Acting Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) concerning the ownership and trust status of certain property formerly held in Indian trust status for Ida Skenandoah White, an unallotted Oneida Indian of Wisconsin, who was appellant's mother. For the reasons discussed below, the Board affirms that decision.

Background

Through inheritance, Ida White acquired an undivided interest in certain real property located on the Oneida Indian Reservation, Brown County,

Wisconsin. The land consists of lots 1 and 2, sec. 22, T. 24 N., R. 19 E., fourth principal meridian, and encompasses 26.5 acres more or less. Ida eventually purchased the interests of the other owners of this property, so that she held the entire interest.

On October 1, 1979, Ida, with several members of her family, visited the Great Lakes Agency (agency) of the Bureau of Indian Affairs (BIA) in Ashland, Wisconsin, with the expressed purpose of requesting agency personnel to prepare a new will for her. Ida indicated she wished to devise the Oneida property to Mark White, the adopted son of her son Theodore B. White, appellant here. Ida and/or other family members identified Mark as a Pine Ridge Sioux enrollee. Because they understood that Ida wished to discuss and execute a will, agency realty personnel asked other family members to leave the room.

During the course of the discussion, BIA personnel informed Ida that the Wisconsin Oneidas had organized under the Indian Reorganization Act (IRA), Act of June 18, 1934, 25 U.S.C. §§ 461-479 (1982). Because Mark was neither a member of the Oneida Tribe, nor Ida's heir at law, she was told he was not eligible to inherit land on the Oneida Reservation under the provisions of 25 U.S.C. § 464 (1976). 1/ Ida was further advised she could accomplish her objective by deeding the land to Mark. She agreed to do this, and a deed was prepared conveying the land to Mark and reserving a life estate for Ida. 2/ The deed was approved by the agency Superintendent on October 24, 1979. Affidavits signed by the BIA personnel assisting Ida state she was alert and fully understood what she was being told and what she was doing.

Agency personnel were told to send the completed documents to an address in Rapid City, South Dakota. It was later discovered that no member of the family resided at the address given, and neither Ida nor Mark ever received a copy of the deed. It is undisputed that Mark did not know until 1981 that the land had been deeded to him. Some family members argue Ida did not understand she had executed a deed, thereby giving Mark present ownership of the property.

On June 25, 1981, Mark executed a quit claim deed conveying the property back to Ida, but reserving a life estate for himself. This deed was never presented to BIA for approval. Appellant contends this was the first time Mark was aware the land had been deeded to him, and believed Ida wished him to reconvey the land to her so she could devise it to appellant. On the same day, Ida signed a will equally dividing all of her property among her four children: appellant, Lucille Cook, Phyllis Fast Wolf, and James E. White.

1/ Section 4 of the IRA, 25 U.S.C. § 464, was amended in 1980 to permit inheritance by "any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust." See Act of Sept. 26, 1980, P.L. 96-363, § 1, 94 Stat. 1207.

2/ Family members were apparently not invited back into the room when Ida decided to prepare a deed instead of a will.

On October 15, 1981, after appellant became aware of some of the prior transactions concerning the Oneida property, Mark executed a deed conveying the property in trust to appellant, reserving a life estate for Ida. There is no indication BIA officials were made aware of the earlier June 1981 deed to Ida. The October 1981 deed was approved by the Minneapolis Area Director (Area Director) on November 19, 1981.

Ida died on March 2, 1984. Because she died possessed of land in Indian trust status, a hearing to probate her trust estate was held before Administrative Law Judge Vernon J. Rausch on June 25, 1984. All four of Ida's children were present at the hearing. Judge Rausch noted there was a controversy over ownership of the Oneida property, and therefore stated his order would not address that land unless BIA reached a decision prior to the issuance of his order. If it was determined after his order that Ida owned the land at the time of her death, Judge Rausch indicated he would issue an order modifying his original order.

On October 3, 1984, the agency Superintendent concluded that title to the Oneida property had passed to Mark in fee under Ida's deed. This conclusion was reached, based upon an analysis by the Twin Cities Field Solicitor, because Mark was found to be a full-blood Navajo. Because the Navajo Nation had voted not to organize under the IRA, there was no authority in 1979 for the Department to acquire land to be held in trust for him. The Superintendent further concluded that the 1981 quit claim deed from Mark to Ida was effective because the property was held in fee and consequently the deed did not require Secretarial approval. Accordingly, he found the 1981 deed from Mark to appellant ineffective.

Appellant appealed this decision to the Area Director. On December 27, 1984, the Area Director affirmed the decision.

On October 17, 1985, appellee affirmed the finding that the land had been conveyed to Mark in fee. Appellee, however, declined to rule upon the validity of the deed to Ida, stating any decision on that matter was not within the jurisdiction of the Department of the Interior, but instead must be addressed to the Wisconsin State court having jurisdiction over probate of Ida's nontrust estate. Appellee concluded that the deed to appellant was invalid.

On January 30, 1986, Judge Rausch issued an order approving Ida's June 25, 1981 will, and ordering her trust estate distributed to her four children in accordance with its provisions. No one objected to this finding or requested rehearing.

Appellant sought review of appellee's decision by the Board. Both appellant and appellee filed briefs on appeal.

Discussion and Conclusions

In his opening brief, appellant raises only arguments concerning whether undue influence was exerted on Ida in the execution of her 1981 will and

whether she had testamentary capacity when that will was executed. These questions, which do not address the validity of the 1979 deed, should have been raised and considered within the context of the probate hearing before Judge Rausch. 3/

Appellant's reply brief shows he intended a broader argument, encompassing undue influence in the execution of the 1979 deed as well as in the execution of the 1981 will. Appellant alleges family members influenced Ida to execute a will in 1979, leaving the property to Mark, and only learned after the fact that Ida had actually executed a deed. Because this was not what the other family members had intended, appellant asserts they attempted to remedy the situation by influencing Mark to convey the land back to Ida by telling him his grandmother wanted him to do it.

In Wishkeno v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21, 89 I.D. 655 (1982), the Board examined gift conveyances of Indian trust or restricted land to family members. Although the specific issue raised in Wishkeno concerned the Secretary's authority to approve a conveyance retroactively after the death of the grantor, the general conclusions reached there regarding gift conveyances to family members are equally applicable here.

Under 25 CFR 152.17, "trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner." Section 152.25 (d) provides that:

> With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

In Wishkeno, the Board held these sections gave the Secretary "authority to approve a conveyance * * * if the Secretary is satisfied that the consideration for conveyance was adequate; the grantor received the full consideration bargained for; and there is no evidence of fraud, overreaching, or other illegality in the procurement of the conveyance." 11 IBIA at 32, 89 I.D. at 661. The Board specifically noted that in gift conveyances to family members, the Department "has already determined by regulation that * * * 'no consideration' may be adequate consideration." 11 IBIA at 33 n.9, 89 I.D. at 661 n.9.

3/ Appellant's reply brief suggests he might be preparing a petition to reopen Ida's estate. The Board has been informed by the Office of Administrative Law Judge Frederick W. Lambrecht, who would now have jurisdiction over this estate, that no petition has been filed. Any such petition would have to be filed in accordance with the provisions of 43 CFR 4.242.

In the present case, therefore, the consideration given for the 1979 deed, "One dollar, love and affection," was legally adequate consideration for the conveyance, and Ida received the full consideration for which she bargained. The only remaining question is whether there is evidence of fraud, overreaching, or other illegality in the procurement of the conveyance.

Normally, the question of whether a conveyance was fraudulently procured involves consideration of the actions of the grantee. There is no dispute here that the grantee, Mark, had no knowledge of Ida's conveyance to him until several years later.

Instead, in this case, the question of fraudulent procurement of the conveyance concerns the actions of appellant's siblings. Appellant and Phyllis Fast Wolf allege Ida was misled into conveying the land to Mark by being told that appellant had disinherited Mark. Because of her special closeness to Mark they assert Ida conveyed her property to him so he would have land. This position is supported principally through a November 1, 1984, affidavit given by Phyllis Fast Wolf in which she sets forth the alleged plan.

Both the Area Director and appellee had a number of affidavits, including Phyllis Fast Wolf's, before them when they issued their decisions. They specifically considered the affidavits and concluded that they did not show the conveyance was fraudulently procured. Furthermore, they concluded there was a special relationship between Ida and Mark which would readily account for Ida's actions.

[1] Approval of conveyances of Indian trust or restricted land is committed to the discretion of BIA. In reviewing such approvals, it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration has been given to all legal prerequisites to the exercise of discretion. Wishkeno, supra. Here, appellee considered and rejected the claim that the conveyance was fraudulently procured. That judgment is not clearly against the weight of the evidence.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 17, 1985 decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) is affirmed.

//original signed
Kathryn A. Lynn
Administrative Judge

I concur:

//original signed
Anita Vogt
Acting Chief Administrative Judge